IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANIDGARH

CIVIL WRIT PETITION NO.1636 of 2007

DATE OF DECISION: 01.11.2007

VIKRANT SALES (P) LTD.

…….PETITIONER
through Mr. R.K.Chopra, Sr. Advocate with
Mr. Amit Chopra,Advocate

Versus

THE UNION OF INDIA & OTHERS.

……RESPONDENTS
through Mr. A.G.Masih, Sr. DAG, Punjab

CORAM:HON'BLE MR. JUSTICE VIJENDER JAIN,CHIEF JUSTICE
HON'BLE MR. JUSTICE MAHESH GROVER.

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment?**

2. **To be referred to the Reporters or not?**

3. **Whether the judgment should be reported in the Digest?**

VIJENDER JAIN, CHIEF JUSTICE

The petitioner has invoked the jurisdiction of this Court under Articles 226/227 of the Constitution of India praying for quashing of the letter dated 16.01.2007 vide which the earnest money deposited by the petitioner's company for the supply of Drug Kits as Kit Packages and Individual Drug Items has been returned.

The case of the petitioner was that the Government of India provides funds to the Government of Punjab for the purchase of

Drugs under the Purchase Preference Policy (hereinafter known as 'the Policy') for supply of drugs to the Primary Health Centers, Community Health Centers and Sub Centers within the State. According to the instructions issued by the Government of India, procurement of drugs has to be made by the Punjab Government and for the purpose of facilitation and convenience, to make Drug Kits Box etc. and supply to different centers catering to the different Health Centers established pursuant to its Health Policy.

Earlier, the policy used to be confining the purchase to Public Sector Companies but since difficulties were being faced by the Punjab State Government in procurement of such kits from Public Sector Undertkings, it had requested the Government of India to allow it to obtain supply to Drug Kits from the private companies for direct supplies to Primary Health Centers and Sub Centers.

An advertisement was inserted in October, 2006 in number of leading newspapers inviting tenders for the supply of Drug Kits as Kit Packages and Individual Drug Items pursuant to which the petitioner applied with the complete and requisite information.

The tender documents were opened on 17.11.2006 and the petitioner's tender was found to be the lowest for the supply of Drug Kit 'A', 'B' and 'CHC' Kit. and his rates were the lowest.

The petitioner was accordingly assured that he would be awarded these contracts for the supply of Drug Kit 'A', 'B' and 'CHC' Kit as his rates were the lowest.

On 21.11.2006, the Government of India permitted the State of Punjab to go ahead for the purchase of medicines meant for

the Drug Kits as per the procedure already initiated by it from other sources and the Public Sector Companies.

Instead of completing the process for which the necessary approval had also been received, respondents-State of Punjab responded to a representation made by one Karnataka Antibiotics & Pharmaceuticals Ltd. who stated that it is a Public Sector Enterprises and preference should be given to them for supply of Drug Kits.

Pursuant to the aforesaid representation, the impugned letter dated 16.01.2007 was issued to the petitioner and his earnest money which he deposited pursuant to the process of tender was returned, which is the principle grievance of the petitioner. The respondents thereafter resorted to fresh advertisement and private places were also included.

It was contended by learned counsel for the petitioner that the entire action is arbitrary as it is only the petitioner who had submitted the lowest price pursuant to a validly floated tender and the cancellation of the process at the instance of Karnataka Antibiotics & Pharmaceuticals Ltd. was highly arbitrary as it was neither a participant in the process of tender nor could it offer the Drug Kits as per the requirement of the respondents. Besides, even after the fresh advertisement when private players were included no other participant could provide the Drug Kits in totality of the drugs required by the respondents and, therefore, to exclude the petitioner for these reasons cannot be sustained in the eyes of law.

On the other hand counsel for the respondents did not dispute the fact but stated that Karnataka Antibiotics & Pharmaceuticals Ltd. , Bangalore had submitted a representation on the basis of which the process of tender in favour of the petitioner was cancelled and the State was competent to drop the tender. Fresh tenders were invited and since the policy of the State is to acquire medicines through the Public Sector Undertakings, there was no infirmity in their action.

We have heard the learned counsel for the parties at some length and have perused the record.

The petitioner who had been awarded the contract on the basis of valid process initiated by the respondents had a legitimate right of expectation that the same contract would be awarded to him. Such a right could be deprived to him only on the basis of a decision supported by valid reasons. If adherence to the policy of the State to purchase drugs from Public Sector Companies only was a factor, then where was the necessity of including the private players which prompted the petitioner to participate. That apart the Government of India by virtue of Annexure P-5 had also permitted the completion of the process initiated by the respondents for purchase of the Drug Kits pursuant to the process of tender floated by the respondents in which the petitioner was a successful participant. The respondents cannot take one step forward and two steps backwards without any justifiable reasons.

Concededly no player including the Public Sector Undertakings have been taken to supply the kits at the rates provided

by the petitioner so much so that none of the participant was able to provide the comprehensive kits as offered by the petitioner.

We are, thus, amazed at the decision making process of the respondents, which at best seeks to defeat the very purpose for which the process of procuring drugs was initiated i.e. for the benefit of the people.

Clearly the State is within the rights to ensure the quality for which stringent measures could be and ought to be provided but it cannot hold the whole system of procurement and dispensation of the drugs to the public, to ransom merely because there exists some policy where the private operators are to be precluded and Public Sector Undertakings are to be preferred.

In the matters of such public importance i.e. procurement of Drugs and in view of fact that Central Government relaxed purchase of Drugs from private parties to achieve public good, sticking to the stand of not granting tender to petitioner can not be termed to be in public intgerest. Admittedly, no other participants including Karnataka Antibiotics & Pharmaceuticals Ltd. has offered to give Drug Kits as required by the State of Punjab.

Once the process of formalization of tenders has been completed, giving rise to a legitimate expectation to the petitioner the same could not be cancelled by the respondents more so when there were no other participants who could meet the requirements. Even in the subsequent process no one could offer the kits to meet the requirements of the respondents much in the same way as offered by

the petitioner at the lowest rates to the satisfaction of the respondents.

Hence, the writ petition is allowed. The letter dated 16.01.2007 is quashed and the respondents are directed to immediately initiate the process of procurement of the requisite Drug Kits ‘A’, ‘B’ and ‘CHC’ from the petitioner after complying with the necessary specifications contained in Annexure P-5.

(VIJENDER JAIN)
CHIEF JUSTICE

November 1, 2007 **(MAHESH GROVER)**
nt **JUDGE**